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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,443

09/19/2003

Alexander Serkh

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THE GATES CORPORATION  
IP LAW DEPT. 10-A3  
1551 WEWATTA STREET  
DENVER, CO 80202

EXAMINER

JOHNSON, VICKY A

ART UNIT

PAPER NUMBER

3682

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/664,443	<b>Applicant(s)</b> SERKH, ALEXANDER	
	<b>Examiner</b> Vicky A. Johnson	<b>Art Unit</b> 3682	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Schmid (US 6,039,664) reference is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.131.
2. The Declaration filed on April 5, 2006 under 37 CFR 1.132 has been considered but is ineffective to overcome the US 6,039,664 reference.
3. The Declaration filed on May 31, 2006 under 37 CFR 1.132 has been considered but is ineffective to overcome the US 6,039,664 reference.

### ***Allowable Subject Matter***

4. The indicated allowability of claims 4 and 15 is withdrawn in view of further consideration. Rejections reference(s) follow.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 12, and 22, the phrase "type" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2145.

Claims 1, 12, and 22 are indefinite because it is unclear how the tensioner is balanced in terms of parasitic torque across the pivot bearing.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 and 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmid (US 6,039,664).

Schmid discloses an improved power transmission belt tensioner of the type having a pulley (3) adapted to communicate with a surface of a power transmission belt, an arm (2) supporting said pulley upon which said pulley is rotatably mounted via a pulley bearing (see Fig 2), a shaft (5) supporting said arm, said shaft rotatably supported by a pivot bearing (13), an attachment point (see Fig 2) for a strut (1), and said strut attached to said attachment point (see Fig 2), the improvement comprising: said pulley (right side) and said attachment point (left side) laterally offset in relation to said pivot bearing and substantially balanced in terms of parasitic torque across said pivot bearing (It is inherent that the forces of the strut would balance out the forces of the pulley, because as the belt applies more force against the pulley the strut would apply an equal opposite force in order to keep tension on the belt. The forces of the pulley and the strut have to pass through the pivot bearing and balance in order to keep the appropriate tension on the belt).

Re claim 2, said strut attachment point is laterally opposite of said pivot bearing in relation to the plane of rotation of said pulley (see Fig 2).

Re claim 3, said strut attachment forms part of a member (2) extending from a support for said pulley bearing (see Fig 2).

Re claim 5, said strut attachment point is laterally opposite of said pulley in relation to the plane of rotation of said pivot bearing (see Fig 2).

Re claim 6, said strut attachment point is beyond the lateral limits of said pivot bearing (see Fig 2).

Re claim 7, said strut attachment forms part of a member (2) extending from said shaft (see Fig 2).

Re claim 8, the plane at the center of rotation of said pulley is beyond the lateral limits of said pivot bearing (see Fig 2).

Re claim 9, said pulley is radially opposite of said attachment point in relation to said pivot bearing (see Fig 2).

Re claim 10, said member (2) is a lever arm.

Re claim 11, said tensioner includes a base (2) adapted to support an accessory (the base 2 is capable of being adapted to hold an accessory).

9. Claims 12-14 and 16-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mutoh et al (DE 3809169).

Mutoh et al disclose a power transmission drive comprising; a crankshaft pulley (1); an accessory pulley (3); a power transmission belt (5); a power transmission belt tensioner having a tensioner pulley (6) adapted to communicate with a surface of said power transmission belt (see Fig 1), an arm (7) supporting said tensioner pulley upon which said tensioner pulley is rotatably mounted via a pulley bearing (9), a shaft (10)

Art Unit: 3682

supporting said arm, said shaft rotatably supported by a pivot bearing (unnumbered, see Fig 2), an attachment point (unnumbered, see Fig 1) for a strut (21), and said strut attached to said attachment point (at 28), said pulley and said attachment point laterally offset in relation to said pivot bearing (see Fig 2) and substantially balanced in terms of parasitic torque across said pivot bearing (It is inherent that the forces of the strut would balance out the forces of the pulley, because as the belt applies more force against the pulley the strut would apply an equal opposite force in order to keep tension on the belt. The forces of the pulley and the strut have to pass through the pivot bearing and balance in order to keep the appropriate tension on the belt) and, said power transmission belt trained about said crankshaft pulley, said accessory pulley and said tensioner pulley (see Fig 1).

Re claim 13, said strut attachment point being laterally opposite of said pivot bearing in relation to the plane of rotation of said tensioner pulley (see Fig 2).

Re claim 14, said strut attachment forms part of a member (7) extending from a support for said pulley bearing (see Fig 2).

Re claim 16, said strut attachment point being laterally opposite of said pulley in relation to the plane of rotation of said pivot bearing (see Fig 2).

Re claim 17, said strut attachment point being beyond the lateral limits of said pivot bearing (see Fig 2).

Re claim 18, said strut attachment forms part of a member (7) extending from said shaft.

Re claim 19, the plane at the center of rotation of said pulley being beyond the lateral limits of said pivot bearing (see Fig 2).

Re claim 20, said member (7) being a lever arm.

Re claim 21, said power transmission tensioner includes a base adapted to support an accessory (the base 7 is capable of being adapted to hold an accessory).

Re claim 22, Mutoh et al disclose method of tensioning a power transmission belt comprising: providing said power transmission belt (5), providing a pivot bearing (unnumbered see Fig 2), providing a tensioner having a pulley (6) adapted to communicate with a surface of said power transmission belt (see Fig 2), a supporting structure (7) including a supporting shaft (10) rotatably supported by said pivot bearing for supporting a supporting arm (see Fig 2), said supporting arm for supporting said pulley (see Fig 2), said pulley being rotatably mounted upon said supporting arm via a pulley bearing (9), said pulley being laterally offset in relation to said pivot bearing (see Fig 2), and an attachment point (at 28) for a strut (21), said attachment point being laterally offset in relation to said pivot bearing (see Fig 2), providing said strut (21), communicating a biasing force from said strut to said attachment point (at 28), said supporting structure (7) communicating said biasing force to said pulley through rotation about said pivot bearing (10), and substantially balancing said biasing force at said pivot bearing in terms of parasitic torque (It is inherent that the forces of the strut would balance out the forces of the pulley, because as the belt applies more force against the pulley the strut would apply an equal opposite force in order to keep tension on the belt.

The forces of the pulley and the strut have to pass through the pivot bearing and balance in order to keep the appropriate tension on the belt).

### ***Response to Arguments***

Some further comments regarding the applicant's remarks are deemed appropriate.

The applicant argues that the above-cited references fail to meet the limitations of the claims because they fail to disclose the pulley and the attachment point being substantially balanced in terms of parasitic torque "through" versus "across" the pivot bearing. The Examiner disagrees. The claimed structure is clearly shown.

The MPEP states in 2112.01 that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

The applicant's remarks have been accorded due consideration, however, they are not deemed fully responsive.



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (571) 272-7106. The examiner can normally be reached on Monday-Friday (7:00a-3:30p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vicky A. Johnson/  
Primary Examiner, Art Unit 3682